

MAY 3 1996

STATE OF ARIZONA  
DEPARTMENT OF INSURANCE  
DEPT. OF INSURANCE  
BY COO

In the Matter of )  
 ) Docket No. 95A-269-INS  
 )  
AMERICAN CLASSIC REINSURANCE )  
 )  
COMPANY (NAIC NO. 69595), )  
 )  
 ) ORDER  
Petitioner )  
 )  
 )

On April 26, 1996, the Office of Administrative Hearings, through Administrative Law Judge Lewis D. Kowal, submitted "Recommended Findings of Fact, Conclusions of Law and Recommended Order", a copy of which is attached and incorporated by this reference. The Director of the Arizona Department of Insurance has reviewed these recommendations, and enters the following order:

1. The Recommended Findings of Fact and Conclusions of Law are adopted with the exception of Recommended Finding of Fact 12 ;

2. Recommended Finding of Fact 12 is replaced with the following Finding of Fact: "12. The Department contends that because Petitioner failed to timely file its MD&A Report, it failed to timely file its Annual Statement."

3. Petitioner was required to file an MD&A Report as part of the Annual Statement and the Department's assessment of a penalty fee of \$1,620 against the Petitioner for late filing of the MD&A Report was authorized by statute and appropriate.

...


...

1 NOTIFICATION OF RIGHTS

2 The aggrieved party may request a rehearing with  
3 respect to this Order by filing a written petition with the  
4 Office of Administrative Hearings within 30 days of the date of  
5 this Order, setting forth the basis for such relief pursuant to  
6 A.A.C. R20-6-114(B).

7 The final decision of the Director may be appealed to  
8 the Superior Court of Maricopa County for judicial review  
9 pursuant to A.R.S. §20-166.

10 DATED this 2nd day of May, 1996

11  
12   
13 Chris Herstam  
14 Director of Insurance

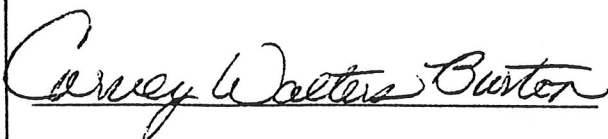
15 COPY of the foregoing mailed/delivered  
16 this 3rd day of May, 1996, to:

17 Charles R. Cohen, Deputy Director  
18 Gregory Y. Harris, Executive Assistant Director  
19 Catherine O'Neil, Assistant Director  
20 Kelly Stephens, Deputy Assistant Director  
21 Department of Insurance  
22 2910 N. 44th St., Suite 210  
23 Phoenix, AZ 85018

24 Office of Administrative Hearings  
25 1700 West Washington, Suite 244  
26 Phoenix, AZ 85007

27 Michael De La Cruz  
28 Assistant Attorney General  
1275 West Washington  
Phoenix, AZ 85007

Thomas E. Haney  
1421 E. Thomas Road  
Phoenix, AZ 85014



1                                   IN THE OFFICE OF ADMINISTRATIVE HEARINGS  
2

3 In the Matter of:

No. 95A-269-INS

4  
5 **AMERICAN CLASSIC REINSURANCE**  
6 **COMPANY (NAIC No. 69595),**

7                   Petitioner.  
8

**RECOMMENDED FINDINGS OF  
FACT, CONCLUSIONS OF LAW  
AND RECOMMENDED ORDER**

9  
10           On March 20, 1996, a hearing took place in the above-referenced matter.  
11 Assistant Attorney General Michael De La Cruz appeared on behalf of the Arizona  
12 Department of Insurance ("Department"). Thomas E. Haney appeared on behalf of  
13 Petitioner American Classic Reinsurance Company. The record of this matter closed  
14 on April 8, 1996.

15           Based upon the entire record, including all pleadings, motions, testimony, and  
16 exhibits, Administrative Law Judge Lewis D. Kowal prepared the following  
17 Recommended Findings of Fact, Conclusions of Law, and Recommended Order for  
18 consideration by the Director of the Department ("Director").

19                                   **FINDINGS OF FACT**

20           1.       At all times material to this matter, Petitioner was and is licensed by the  
21 State of Arizona as a life reinsurer.

22           2.       On May 24, 1995, Petitioner filed with the Department its 1994 Annual  
23 Statement (the "Annual Statement") which was reviewed by Cary Cook, Solvency  
24 Support Unit Supervisor of the Corporate and Financial Affairs Division of the  
25 Department.

26           3.       In reviewing the Annual Statement, Mr. Cook noticed that Petitioner  
27 failed to include the Certificate of Disclosure, Management Discussion & Analysis  
28 with transmittal form ("MD&A Report") and Holding Company Registration Statement.  
29 However, Petitioner had previously filed with the Department its Certificate of  
30 Disclosure.

31           4.       Mr. Cook credibly testified that the MD&A Report is a document which  
32 the Department considers along with an insurance company's Annual Statement in  
33 evaluating an insurance company's compliance with the solvency provisions of  
34 A.R.S., Title 20.

1           5.     On June 20, 1995, the Department sent Petitioner notice that  
2     Petitioner's 1994 Annual Statement was determined to be incomplete because  
3     Petitioner had failed to file its MD&A Report by April 1, 1995 and that the Department  
4     would bill Petitioner a statutory penalty of \$10.00 per day upon the Department's  
5     receipt of the requested information pursuant to A.R.S. §20-223(D).

6           6.     On November 21, 1995, the Department sent Petitioner a second  
7     notice that Petitioner's 1994 Annual Statement was incomplete because Petitioner  
8     had failed to file its MD&A Report that was due April 1, 1995. In that notice,  
9     Petitioner was again notified that the statutory penalty of \$10.00 per day of  
10    delinquency was in effect pursuant to A.R.S. §20-223(D).

11          7.     On November 28, 1995, Petitioner filed its MD&A Report with the  
12    Department.

13          8.     On December 5, 1995, the Department sent a letter to the Petitioner  
14    wherein the Department notified Petitioner that it had been assessed a penalty fee of  
15    \$1,620.00 based upon Petitioner's delinquent filing of its MD&A Report.

16          9.     On December 19, 1995, Petitioner filed with the Department a Request  
17    for Hearing In Re Penalty Assessment.

18          10.    A Notice of Hearing concerning this matter was issued on January 18,  
19    1996.

20          11.    The Department contends that the Petitioner was required to file its  
21    1994 Annual Statement with the Department by March 31, 1995 pursuant to A.R.S.  
22    §20-223(A). The Department further contends that Petitioner was required to file its  
23    MD&A Report with the Department by April 3, 1995<sup>1</sup> pursuant to A.R.S. §20-223 and  
24    the National Association of Insurance Commissioners ("NAIC") Annual Statement  
25    Instructions.

26          12.    Although no issue was raised as to the timeliness of Petitioner's Annual  
27    Statement, an issue of timeliness was raised as to Petitioner's MD&A Report filing.

28          13.    The NAIC Annual Statement Instructions which were in effect in March  
29    1995 provided that "Insurers are required to file a supplement to the Annual  
30    Statement titled 'Management Discussion, and Analysis' by April 1 each year."

31          14.    Petitioner claims that the MD&A Report is not an "accounting practice  
32    and procedure" contemplated under A.R.S. §20-223 and that the failure to file the

33                 <sup>1</sup> April 1 1995 was a Saturday, therefore, the filing deadline for the MD&A Report for 1995 was the  
34    following Monday, April 3, 1995 pursuant to A.A.C. R20-6-113.

1 MD&A Report by April 3, 1995 does not provide grounds for the Department to  
2 impose a penalty fee against Petitioner.

3 15. The Department issued a Calendar Year 1994 Annual Tax Packet and  
4 Annual Filing Instructions for Domestic Life and Disability Reinsurers which  
5 contained a Management Discussion and Analysis Filing Transmittal Form. In Part  
6 B, paragraph 4 of the 1994 Annual Statement Filing Instructions it states that "All  
7 insurers shall file a Management Discussion and Analysis Report in accordance with  
8 current NAIC Annual Statement Instructions not later than April 1."

9 16. Petitioner presented an excerpt of transcript of proceedings of In the  
10 Matter of Shawmut Life Insurance Company, Insurance Docket No. 95-064 (Exhibit  
11 B), wherein Gerald Torticill testified that the Department may be sending companies  
12 fines for failing to file the MD&A Report. Further, in that proceeding, Mr. Torticill  
13 answered "no" when asked "Would it be your understanding, sir, that if a company  
14 fails to file the MD&A Report that you could fine them?" Petitioner claims that such  
15 testimony supports its position that the Department does not have authority to fine  
16 for the late filing of MD&A Report and offered the aforementioned testimony of Mr.  
17 Torticill in support of that position.

18 17. The excerpt of transcript of the aforementioned Shawmut Life hearing  
19 does not indicate any foundation having been laid as to Mr. Torticill's authority, nor  
20 was such foundation laid at the instant hearing. Additionally, no foundation was laid  
21 as to Mr. Torticill's background and experience regarding MD&A Report filings with  
22 the Department or Mr. Torticill's legal background and ability to answer questions  
23 regarding the Department's authority to fine. Further, regardless of Mr. Torticill's  
24 understanding of the Department's authority, the issue of whether the Department  
25 has the authority to fine for late filing of an MD&A Report is purely a legal question,  
26 not one of opinion or fact. Mr. Torticill's testimony in the aforementioned Shawmut  
27 hearing appears to be a personal opinion that is not binding nor controlling as to  
28 whether the Department has the authority to fine for late filing of an MD&A Report.

### 29 CONCLUSIONS OF LAW

30 1. Petitioner received notice of this proceeding as prescribed by A.R.S.  
31 §§20-163 and 41-1061.

32 2. The Director has jurisdiction over this matter pursuant to A.R.S.  
33 §§20-161, 20-220 and 20-223.  
34

1           3.     While reinsurers licensed pursuant to A.R.S. §20-1081 et seq. are  
2     exempted from the requirement in A.R.S. §20-234 of filing an Annual Statement with  
3     the NAIC, the Arizona Legislature, through A.R.S. §20-223, incorporated the NAIC  
4     Instructions. During the relevant time frame, the NAIC Instructions required all  
5     insurers to file an MD&A Report as part of the Annual Statement. There is no  
6     exception made within A.R.S. §20-223 or the NAIC Instructions that would relieve  
7     Petitioner from that filing requirement. Therefore, Petitioner was required to file an  
8     MD&A Report as part of its Annual Statement filing with the Department pursuant to  
9     A.R.S. §20-223.

10           4.     The Department has the authority to fine Petitioner a penalty fee not to  
11     exceed \$25.00 for each day of delinquency in the filing of an Annual Statement,  
12     which includes the MD&A Report. The Department's assessment of \$1,620.00  
13     based upon a \$10.00 per day of delinquency in the filing of Petitioner's MD&A Report  
14     is in accordance with A.R.S. §20-223(D).

15           5.     Grounds exist pursuant to A.R.S. §20-220 for the Director to revoke or  
16     suspend the Petitioner's certificate of authority and/or impose a civil penalty.

17                     **RECOMMENDED ORDER**

18           Based upon the above, the undersigned Administrative Law Judge  
19     recommends that the Director find that Petitioner was required to file an MD&A  
20     Report as part of the Annual Statement and that the Department's assessment of a  
21     penalty fee of \$1,620.00 against the Petitioner for late filing of the MD&A Report was  
22     authorized by statute and appropriate and that no further penalty be imposed.

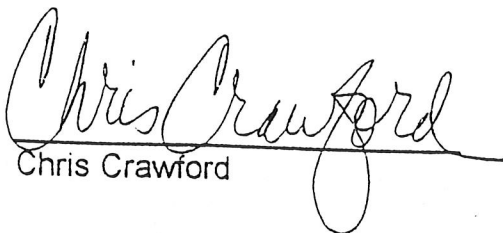
23           DATED this 26<sup>th</sup> day of April, 1996.

24                                     OFFICE OF ADMINISTRATIVE HEARINGS  
25

26  
27                                     *Lewis D. Kowal*  
28                                     LEWIS D. KOWAL  
29                                     Administrative Law Judge  
30  
31  
32  
33  
34

1 COPY of the foregoing mailed/delivered  
2 this 26<sup>th</sup> day of April, 1996, to:

3 Chris Herstam, Director  
4 Arizona Department of Insurance  
5 2910 North 44th Street, Suite 210  
6 Phoenix, AZ 85018

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9 Chris Crawford  
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